



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

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MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 82- 129

Susie Parmer
Register of Deeds
Leavenworth County Courthouse
Fourth and Walnut
Leavenworth, Kansas 66048

Re: . Taxation--Mortgage Registration Fee--Mortgage of
Oil and Gas Leasehold Interest

Uniform Commercial Code--Secured Transactions--
Security Interests in Oil or Gas After Extraction

Synopsis: Article 9 of the Uniform Commercial Code (UCC), which governs secured transactions, is applicable to a security interest in oil or gas after such minerals are extracted from the earth. The UCC is not applicable, however, to mortgages of oil and gas leasehold interests, and recordation of such mortgages is governed by the real estate recordation statutes in Chapter 58 of the Kansas Statutes Annotated and the mortgage registration fee statutes, K.S.A. 79-3101 et seq. Cited herein: K.S.A. 1981 Supp. 79-3102, 84-9-402.

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Dear Mrs. Parmer:

You have submitted to our office a Uniform Commercial Code financing statement (UCC-1), which states that it covers the following property:

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"All equipment used in the production of oil, gas or other minerals, all goods so produced, all accounts receivable of debtor now existing or hereafter arising from the sale of such productions; all contract rights & general intangibles, all as used, produced or arising from the real estate described below. (See Below Debtor signatures on attachment) This financing stmt is intended to cover future advances & to include as collateral after acquired property of the types described & relating to the aforesaid real estate, all as set forth in the security agreement."

Attached to the UCC-1 is a sheet of paper giving the legal description of the real estate from which oil or gas will be produced.

Also attached to the UCC-1 is a document entitled "Assignment of Interest in Oil and Gas Lease." This instrument states, in relevant part, that certain individuals, operating as joint venturers, "are the owners of an undivided .1025390 working interest in and to an oil and gas mining lease," and those individuals "hereby assign and pledge said interest in and to said oil and gas mining lease to Southwest National Bank . . . as security for a loan" (Emphasis added.)

You ask whether the UCC-1 statement or the "Assignment of Interest in Oil and Gas Lease" may be placed in the UCC files, since each gives the legal description of real property. You also ask if a mortgage registration fee is due on either instrument.

Concerning the UCC-1, we first note that the Uniform Commercial Code is not applicable to oil or gas before such minerals are extracted from the earth, but is applicable to such minerals after they are extracted. (See K.S.A. 1981 Supp. 84-9-105(h).) We also note K.S.A. 1981 Supp. 84-9-402, which prescribes those items that must be provided in a financing statement. In relevant part, this statute provides:

"(1) . . . When the financing statement . . . covers minerals or the like (including oil or gas) . . . the statement must also comply with subsection (5)"

. . . .

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"(5) A financing statement . . . covering minerals or the like (including oil or gas) . . . must show that it covers this type of collateral, must contain a legal description of the real estate concerned and the name of the record owner of the real estate concerned."

A review of the UCC-1 submitted by you shows that it complies with the requirements of K.S.A. 1981 Supp. 84-9-402(5), except that it does not contain the name of the record owner of the real estate concerned. When the name of the owner is added to the statement, it is our opinion that it will comply with the requirements of the above cited statute and should be placed in the UCC files.

The instrument entitled "Assignment of Interest in Oil and Gas Lease," however, is not to be placed in the UCC files. Under the provisions of that instrument, the property being assigned and pledged as security for a loan is the owners' working interest in an oil and gas mining lease.

In Ingram v. Ingram, 214 Kan. 415 (1974), the Kansas Supreme Court held: "A mortgage or assignment of an oil and gas leasehold interest for security purposes is to be treated as a real estate mortgage and such instruments are not subject to the provisions of the Uniform Commercial Code." Id. at Syl. ¶3. The Court also held that such instruments are governed by the real estate recordation statutes in Chapter 58 of the Kansas Statutes Annotated.

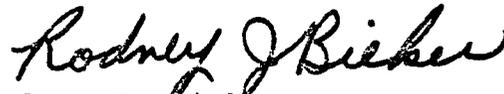
Based upon the Ingram case, we have no hesitancy in concluding that the instrument entitled "Assignment of Interest in Oil and Gas Lease" is to be treated as a real estate mortgage and may not be placed in the UCC files.

Moreover, it is our opinion that if the bank desires to have this instrument filed of record in the real estate records, it will have to pay an appropriate mortgage registration fee, pursuant to K.S.A. 1981 Supp. 79-3102.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
Assistant Attorney General

RTS:BJS:RJB:ta